



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 14-00715  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

09/09/2014

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s illegal marijuana use while possessing a security clearance from about August 2006 until April 2013 violated the trust placed in him by the Government. His criminal behavior raises serious questions about his reliability, trustworthiness, judgment, willingness to comply with the law and follow regulations, and his ability to protect classified information. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 7, 2014. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement) and Guideline E (personal conduct) on April 3, 2014.<sup>1</sup> Applicant answered the SOR on April 23, 2014, and elected to have his case decided on the written record in lieu of a hearing.

---

<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

A copy of the Government's file of relevant material (FORM), dated June 30, 2014, was mailed to him on July 7, 2014. Applicant received the FORM on July 15, 2014. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He submitted a three page response to the FORM, dated August 12, 2014, which was made part of the record. The case was assigned to me on August 28, 2014.

### **Findings of Fact**

Applicant admitted all the factual allegations in the SOR, with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, including his January 2014 SCA, his answers to the SOR (including an additional note attached to his answer to the SOR, and his response to the FORM, I make the following findings of fact:

Applicant is a 60-year-old group manager working for a government contractor. He was awarded a bachelor's degree in June 1976. He married his wife in May 1978, and they have three adult children.

Applicant worked for another government agency (agency) from 1977 to 1985. He was hired by his current employer, a government contractor, in May 1985. He has possessed a security clearance for over 36 years; 8 with the agency, and 29 years with his current employer. A Joint Personnel Adjudications System document shows that Applicant was most recently granted eligibility for a secret clearance in May 2004. (Item 5)

In January 2014, Applicant submitted an SCA requesting the renewal of his eligibility for a security clearance. In his answer to Section 23 (Illegal Use of Drugs or Drug Activity), Applicant disclosed that he illegally used marijuana from August 2006 until April 2013, while possessing a security clearance. He described his use as "Once or twice a year. Maybe 10 times in the last seven years. Used in very small amounts." Applicant also stated his intent to illegally use marijuana in the future. He explained: "I consider it harmless for occasional recreational use and would never use it in a situation that might lead to any endangerment of others or myself, nor would I ever use it in a work environment."

In his April 2014 answer to the SOR, Applicant reaffirmed his admissions. He believed that his illegal use of marijuana did not make him a security risk. He noted that being truthful about his use of marijuana made it more difficult for any potential threat to use his criminal behavior as adverse information against him. Applicant professed his love for the United States, and that he is a loyal American citizen. He stated that he would never do anything to jeopardize the United States, and that he fully understood the importance of safeguarding classified information.

---

*for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.*

Applicant believes that he holds an important position with his employer, and that his contributions and expertise help our service members' safety, and ultimately, our national security. He also believes that the revocation of his clearance would have a negative effect on national security. Applicant would like to continue serving the United States in his current capacity.

In his answer to the SOR and in his response to the FORM, Applicant stated that he unequivocally does not intend to use any illegal drugs in the future. He realized that he made a "great error in judgment," and recognized that his use of marijuana was against the law. He professed his ability and willingness to abide by the law in the future, and understands the risk on his ability to hold a security clearance and serve his country created by his illegal use of drugs.

Applicant noted that he has a personal history that demonstrates service to others, as indicated by his participation in the Parent Teacher Association, community and children organizations, church, veterans' groups, boy scouts, and other philanthropic organizations. Applicant also highlighted his work ethic, and his outstanding character and reputation in his community.

Applicant claimed that his illegal use of marijuana was infrequent and it is not recent (his last use was 17 months ago). He averred that he has abstained from any illegal drug for almost two years, that he no longer associates with illegal drug-users, and that he never frequented places where illegal drugs were used. Because of his changed lifestyle and behavior, Applicant believes that his illegal drug use is unlikely to recur.

### **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 articulates the security concern for drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant illegally used marijuana from about 1971 to 1974, and from August 2006 to April 2013. He used marijuana while possessing a secret level security clearance.

AG ¶ 25 describes three conditions related to drug involvement that could raise a security concern and are disqualifying in this case:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

AG ¶ 26 provides two potentially applicable drug involvement mitigating conditions:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence.

None of the Guideline H mitigating conditions fully apply. Applicant's most recent illegal drug-related behavior occurred in April 2013. As such, his drug-related behavior is recent. Applicant claimed that his marijuana use was infrequent, and that he only consumed small amounts of marijuana. Nevertheless, he has illegally used marijuana recurrently from 1971 to April 2013.

Because of his age, education, and his experience working for a government contractor and possessing a security clearance, Applicant knew or should have known of the adverse legal and security clearance consequences he would face as a result of his illegal use of marijuana. Applicant's illegal use of marijuana is a violation of the trust placed in him by the Government. It demonstrates a lack of judgment, reliability, trustworthiness, and an unwillingness to comply with the law and follow regulations.

Applicant promised to never use illegal drugs in the future; however, his promise holds little weight. He was aware of the criminal prohibition against the illegal use of drugs, and that did not stop him from using marijuana from 1971 to 1974, and from 2006 to at least April 2013. Moreover, Applicant provided little evidence concerning the circumstances of his illegal drug use. His response is insufficient to mitigate the Guideline H security concerns.

### **Guideline E, Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The personal conduct security concerns are based on the same facts alleged under the drug involvement guideline, incorporated herein. Applicant's illegal marijuana

use from 2006 to at least April 2013, while possessing a secret security clearance, triggers the applicability of disqualifying condition AG ¶ 16(e):

personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

AG ¶ 17 lists one condition that could potentially mitigate the personal conduct security concerns:

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant was candid and forthcoming when he disclosed his illegal marijuana use in his January 2014 SCA. With the disclosure of his illegal drug use, Applicant has taken a positive step to reduce his vulnerability to exploitation and manipulation. I find his disclosure sufficient to mitigate the personal conduct security concerns.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c)) I have incorporated my comments under Guidelines J and E in my whole-person analysis.

Applicant is a competent and valuable group manager working for a government contractor since 1985. He has possessed access to classified information at the secret level during the last 36 years. He is involved in his community and has established an excellent reputation.

Notwithstanding his personal qualifications and past contributions to the Government, Applicant's illegal use of marijuana from 2006 until at least April 2013 violated the trust placed on him by the Government. His criminal behavior while possessing a security clearance raises serious questions about his reliability, trustworthiness, judgment, ability to comply with the law, and his ability to protect classified information. He failed to mitigate the Guideline H security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

**Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

---

JUAN J. RIVERA  
Administrative Judge